(2011) 10 SHI CK 0089

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 7022 of 2010

R.K. Sharma APPELLANT

Vs

State of Himachal Pradesh and Another RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:

Punjab National Bank Officers Service Regulations, 1979 — Regulation 20(2)

Citation : (2012) 1 ShimLC 287

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—The petitioner, by means of present petition, seeks the relief by a writ of certiorari for quashing the decision communicated vide Annexure P-6 to the effect that the Corporate Sector Pension Scheme Annexure P-2 will not be applicable to those employees who have voluntary retired even though they are otherwise eligible in terms of Pension Scheme notification and also for writ of mandamus for releasing pensionary benefits in terms of Corporate Sector Pension Scheme (Annexures P-2 and P-3) in a time bound schedule. The facts giving rise to the present petition can be stated thus. The respondent-State framed a Corporate Sector Pension Scheme, which was notified on 29.10.1999. It provided for pension to the Corporate Sector Employees from the employer''s contribution to the provident fund. By virtue of Clause 2 (2) thereof all employees of the H.P. Corporate Sector were required to opt in writing in the prescribed form, within a period of 30 days from the date of notification of the said scheme as to whether they would like to be governed by this scheme or by the existing statutory provisions. In case an employee did not exercise his option within the stipulated period, it was to be treated as deemed exercise of option under the existing pension scheme.

2. The Scheme aforesaid was repealed vide notification dated 2.12.2004 and a new notification provided that all those who retired between 1.4.1999 to 2.12.2004 shall continue to be governed by the 1999 notification. It is also

provided that the respective Corporations/Boards shall be the sanctioning/ disbursing authorities for such retirees and their employer share of C.P.F. including the interest thereon shall be transferred to respective Corporations/ Boards and they shall form a pension fund. Whereas, the other employees continued to be governed under the provisions which were already applicable to them as on 31.3.1999.

3. The record reveals that the Pension Scheme aforesaid though notified, but was not implemented by the respondents. Therefore, some of the employees sought its implementation through the process of the Court. This Court in CWP-T No. 2530 of 2008: R.K. Soni v. State of H.P. and others, in its concluding para of the order directed the respondent-Department for its implementation, which read as under:

Consequently, the Principal Secretary (Finance) is directed to take remedial measures to ensure that the notifications dated 29th October, 1999 and 2nd December, 2004 are implemented qua the employees who have retired on 1st April, 1999 to 2nd December, 2004 including the petitioner. The nonavailability of funds should not come in the way of Corporations/Boards owned by the State of Himachal Pradesh for the purpose of payment of retiral benefits. The Principal Secretary (Finance) is directed to file the supplementary affidavit on or before the next date of hearing.

4. The petitioner is one of the employees who sought "voluntary-retirement" in the year 2001. It is stated at Bar by the learned Counsel for respondent No. 2 that pursuant to the direction passed by this Court in R.K. Soni''s case supra this Scheme was implemented but for those employees who retired on attaining the age of superannuation and the pensionary benefits were released to them, whereas it was denied to the employees seeking "voluntary-retirement."

5. The petitioner had put in 30 years of service. He sought "voluntary-retirement" and his request for "voluntary-retirement" was accepted and the payments which were allowed to be paid to him as mentioned in Annexure P-2 dated 16.4.2001 were released. After implementation of the said Scheme by the respondent-Department, the petitioner made representation to respondent No. 2. In response to this, he was informed that an employee who retired under the "Voluntary Retirement Scheme" (VRS) is not entitled for the pensionary benefits, as per the Finance Department letter Annexure R1, the relevant para of which reads as under:

This department has received several proposals from various public Sector undertakings regarding entitlement of pension alongwith voluntary retirement scheme. In this context, I am directed to inform you that the pension would not be available to the employees seeking retirement under voluntary retirement scheme. It is also further clarified that the benefit of 5 years service under H.P. Civil Services (Premature Retirement) Rules, 1976 would not be admissible to employees seeking retirement under voluntary retirement scheme. [Emphasis mine]

6. The aforesaid Annexure to the extent emphasized is under challenge in this petition.

7. The respondents have resisted and contested the claim of the petitioner on the ground that the petitioner sought "voluntary-retirement" under the Scheme and he approached this Court after a period of ten years. Further that all dues were paid to him under the VRS (Golden Handshake) as per Annexure P-1 attached to the petition, further that no pension is available to the employees seeking retirement under VRS as per letter Annexure R-1 aforesaid. It is also contended that the Government of Himachal Pradesh repealed the Pension Scheme to the effect that the employees who retired between 1.4.1999 to 2.12.2004 are eligible for pension under the Corporate Sector Pension Scheme but only in those cases where the employees had not taken benefit of employers share in the CPF and pension facility available with the CPF, thus double benefit could not be given to the petitioner.

8. Learned Counsel for the respondents vehemently contended that the persons who sought "voluntary-retirement" under the Scheme are not eligible to get the pension of the Corporate Sector Pension Scheme.

9. After considering the rival contentions of the parties, I am of the view that the "voluntary retirement" is different from the "resignation" which normally disentitles an employee from the pensionary benefits. The Supreme Court in Reserve Bank of India and Another Vs. Cecil Dennis Solomon and Another, , in para 10, which is relevant to the case in hand, reads as under:

10. In service jurisprudence, the expressions superannuation, voluntary retirement, compulsory retirement and resignation convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time: but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, same is not denied. In case of the former, permission or notice is not mandate, while in case of the latter, permission of the concerned employer is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary. In Punjab National Bank Vs. P.K. Mittal, on interpretation of Regulation 20(2) of the Punjab National Bank Regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer...

10. In para 11 of the same judgment the Apex Court observed as under:

11. On the contrary, as noted by this Court in Dinesh Chandra Sangma Vs. State of Assam and Others, while the Government reserves its right to compulsorily retire a Government servant, even against his wish, there is a corresponding right of the Government servant to voluntarily retire from service. Voluntary retirement is a condition of service created by statutory provision whereas resignation is an implied term of an employer-employee relationship.

11. This judgment has also been discussed and relied upon in the subsequent judgment passed by the Supreme Court in UCO Bank and Others Vs. Sanwar Mal, . Further, the same view has been reiterated in Padubidri Damodar Shenoy Vs. Indian Airlines Limited and Another,

12. In Sheelkumar Jain Vs. The New India Assurance Company Ltd. and Others, the Supreme Court has held that since voluntary retirement unlike resignation does not entail forfeiture of past services and instead qualifies for pension, an employee to whom the Pension Scheme applies, cannot be said to have resigned from the service.

13. Thus the upshot of the above discussion is that the "voluntary-retirement" cannot be equated with "resignation" so as to decline pension.

14. In view of the afore stated factual background and legal principle I find that the petitioner who had completed requisite qualifying service after giving the notice of "voluntary-retirement" in writing and its acceptance by the appointing authority and then relieving him from service can not be treated like resignation from service. Therefore, he is certainly entitled for pension as per the scheme existing at that time.

15. Further, there was no choice of selection to the petitioner as canvassed by the learned Counsel for the respondents for the reasons that he sought retirement in the year 2001 when the scheme though notified but not implemented. It is only after the direction of this Court passed in R.K. Soni''s case supra that the respondents had implemented the scheme. Although the petitioner has contended that he had exercised his option, but there is no such document to substantiate this fact. But record reveals that after implementation of the Scheme he had made the representation as aforesaid which is an exercise of his option/choice to adopt for the scheme, as earlier there was no such choice available to him to elect because till his retirement as aforesaid the respondents did not implement the Scheme.

16. Therefore, for the foregoing reasons, the ground raised in the letter dated 19.6.2000 (Annexure R-1) the implication whereof is that the petitioner on seeking "voluntary-retirement" is not entitled for pension is wrong and legally thus not sustainable in view of the judicial precedents referred to above, therefore, quashed and set-aside to this extent. Consequently, the petition is allowed, the petitioner is held entitled for pensionary benefits w.e.f. the data of his retirement after deducting the employer''s share. The ground of limitation shall also not come in his way. Therefore, the respondents are hereby directed to

release 50% due and admissible pensionary benefits to the petitioner within a period of "four" months, and balance amount within "three" months thereafter, failing which it shall carry an interest @ 9% per annum from the date, it fell due. With the above directions, the writ petition stands disposed of.

